



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

**VISA 155
CODEC 518
COMIX 340**

OUTCOME OF PROCEEDINGS

of: Visa Working Party/Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)

on: 14 and 15 April 2008

No. Cion prop.: 11752/1/06 REV 1 VISA 190 CODEC 771 COMIX 662

Subject: Draft Regulation of the European Parliament and of the Council establishing a
Community Code on Visas

The Visa Working Party examined Articles 4 to 9 on the basis of the proposal from the Commission and of the compromise proposals from the Presidency (see. 7661/08 and attached Room document No 9/08). The outcome of this examination is set out in the Annex to this note¹.

¹ **HU** presented its proposal for a new Art. 3a, which is set out in the attached room document No 10/08. **COM** was of the opinion that the proposal was unnecessary since the requirements linked to the visa application were already defined in the proposal from the Commission (see Art.1 and 18(4) in particular).

Article 4

"Territorial" competence

1. Third country nationals shall apply for a visa at the **consulate**¹ of a Member State in their country of residence **or at the consulate of that Member State situated in another third country whose jurisdiction covers the applicant's country of residence.**
- 2.² By way of derogation from paragraph 1, applications may in urgent cases³ be lodged by third country nationals who are legally present in a third country other than their country of residence in that other third country. Such applicants shall provide justification for lodging the application in that country and there must be no doubt as to the applicant's intention to return to the country of residence **or to the country of origin**⁴ **or to leave Schengen territory**⁵. (...) ⁶ Applications by bona fide applicants legally present in a third country other than their country of residence may be lodged in that third country.
In that case, **the consulate** located in the applicant's country of residence or the central authorities of the issuing Member State may⁷ be consulted.

¹ Problematic for **PT** because of the competences of consulates defined in the Vienna Convention. The **Chair** indicated that this was the best solution for the time being and that the issue would be considered at subsequent meetings.

² **AT** and **PT** were of the opinion that it is up to the consulate to decide whether or not to process the application.

³ **FR** proposed to make reference to "exceptional cases" instead of "urgent cases".

⁴ Proposal from **NL**.

⁵ Proposal from **FR**.

⁶ Deletion of "Additionally" proposed by COM.

⁷ **DE** recalled the comment it made during the first reading of the document at the Council, when it was of the opinion that this requirement should remain mandatory. **IT** agreed with **DE**. **FR** was of the opinion that the consultation of the consulate of the country of residence should not be made mandatory if the consulate dealing with the application already had all the elements it needed to process the application.

Article 5

Member State responsible for processing a visa application

1. The **consulate** responsible for processing an application for a one- or two-entry¹ short-stay visa shall be:
 - (a) the **consulate** of the Member State in whose territory the sole or **main**² destination of the visit is located, or³
 - (b) **the consulate of the Member State in whose territory the first destination of the visit is located, if the intended travel covers several destinations, or**
 - (c) **the consulate of one of the Member States in whose territory the intended travel will take place, if the first destination of the visit cannot be determined⁴, or**
 - (d) if neither of the criteria **set out in points (a) to (c)** are applicable, the **consulate** of the Member State whose external border the applicant intends to cross in order to enter and stay into the territory of the Member States, or
 - (e) **if the Member State responsible for processing the application in accordance with (d) is not present or represented for the purpose of issuance of short stay visas in the applicant's country of residence, the consulate of another Member State⁵.**

¹ **BE, AT and ES** laid emphasis on the fact that “two entries” is equal to “multiple entry” as proposed in the new paragraph 2 of this Art. Consequently the sole distinction to be made would be between "one entry" and "multiple entry".

² **DE** stated that the deletion of the term “main” could create problems in practice. **FI, NO, LU, ES, BE, EL** were of the opinion that that term should be kept. Several delegations stressed the need to have clearer rules to determine easily which consulate is competent to issue the visa.

³ The **Chair** informed the Working Party that points (a) to (e) were listed hierarchically and that there could be no option left to the applicant.

⁴ **EL** was against the insertion of this point because it is not useful.

⁵ **LV, NL and BE** though that the provision in this new point was against the principle of representation. The **Chair** stressed that it was an important issue for the EP.

2. The consulate responsible for processing an application for a multiple entry short-stay visa shall be¹:
- (a) **the consulate of the Member State in whose territory the usual² destination of the visit is located, or**
 - (b) **the consulate of the Member State in whose territory one of the usual destinations of the visit is located, or**
 - (c) **the consulate of the Member State in whose territory the first destination of the visit is located, if no usual destination can be determined.**
3. The **consulate** responsible for processing an application for a short stay visa for the purpose of transit³ shall be:
- (a) in the case of transit through only one Member State, the **consulate** of the Member State concerned, or
 - (b) in the case of transit through several Member States, the **consulate** of the Member State whose external border the applicant intends to cross to start the transit.
4. The **consulate** responsible for processing an application for an airport transit visa shall be:
- (a) in the case of a single airport transit, the **consulate** of the Member State on whose territory the transit airport is situated, or
 - (b) in the case of double or multiple airport transit, the **consulate** of the Member State on whose territory the first transit airport is situated.

¹ **DE** was in favour of the original proposal from **COM** and added that it would propose a new draft in writing.

² "main destination" would be better for **NL**. **COM** explained that "usual destination" could be applied in the case of businessmen taking part in fairs or sportsmen taking part in sporting competitions.

³ The **Chair** asked whether this part should be included in paragraph 1.

Article 6

Competence in relation to issuance of visas to third country nationals legally present within a Member State's territory

Third country nationals who are legally staying in the territory of a Member State, without holding a residence permit of that Member State, allowing them to travel without holding a visa as provided for in Article 5(1)(b) and Article 34(1)(a) of the Schengen Borders Code, and who have justified reasons for travelling to another Member State, shall apply for a visa at the **consulate** of the Member State of destination.

Article 7

Arrangements on representation

1. Without prejudice to Article 5, the **consulate** of a Member State may agree to represent another Member State for processing applications for short stay visas, transit visas and airport transit visas. The arrangement shall specify the duration, if only temporary, and procedures for termination of such representation, as well as arrangements in relation to possible provision of premises, staff and payments by the represented Member State.

Such bilateral arrangements may stipulate that visa applications from certain categories of third country nationals are to be transmitted by the representing Member State to the authorities of the represented Member State for prior consultation, as provided for in Article 9(3).

- [2¹. A Member State may also represent one or more other Member States solely for the reception of applications and the enrolment of biometric identifiers. The reception and transmission of files and data to the represented consular post shall be carried out in compliance with the relevant data protection and security rules.]

¹ The **Chair** indicated that this paragraph should be discussed in the framework of the draft Regulation of the European Parliament and of the Council amending the Common Consular Instructions on visas for diplomatic and consular posts in relation to the introduction of biometrics including provisions on the organisation of the reception and processing of visa applications.

3. The represented Member State shall inform the Commission about new arrangements on representation or the termination of such arrangements ~~at the latest three months~~¹ before the agreement enters into force or terminates.
4. Simultaneously, the representing Member State shall inform both **the consulates** of other Member States and the delegation of the European Commission in the jurisdiction concerned when arrangements on representation have been concluded and when they enter into force **and when they terminate**.
5. The **consulate** of the representing Member State shall (...) comply with all the rules on the processing of applications for short stay visas (...) and airport transit visas set out in this Regulation and the issuing times set out in Article 20(1) shall apply.
6. When a **consulate** of the representing Member State envisages refusing an application, the complete file shall be submitted to the central authorities of the represented Member State or to the designated regional embassy in order for them to take the final² decision on the application within the time limit set out in Article 20(1)³.
7. If the **consulate** of the representing Member State decides to cooperate with commercial intermediaries or (...) with external service providers, such procedures shall also cover

¹ **COM** opposed to the deletion of the terms "three months" because it would need to know about the arrangements concerning representation long enough in advance. All delegations could agree with the amendment proposed by the Presidency.

² **SE** proposed to delete the word "final".

³ Several delegations were of the opinion that the new system introduced by this provision would be more complicated than the current practice of representation while **FI** agreed with this provision and explained that the collaboration with the Nordic States was based on that system and functioned very well. **DK** proposed then a compromise text which would allow for two options in case of a refusal, along the lines of : "*...envisages refusing an application, the applicant shall be referred to the nearest diplomatic mission of the represented state or the complete file shall be submitted [by the representing Member State] to the central authorities of the represented Member State or to the designated regional embassy.....*". **COM** explained that its proposal was justified by the current practice of the consulates where the applicants, when they are refused a visa by the representing Member State, are simply encouraged to apply once again to another consulate. **COM** wanted to have the current wording maintained and added that the decision on the application would be taken by the represented Member State.

applications handled by way of representation. However, the central authorities of the represented Member State shall be duly informed in advance.

Article 8

Prior consultation of the Member States' own central authorities¹

1. A Member State may require its diplomatic missions or consular posts to consult its central authorities before issuing visas to nationals of certain third countries or specific categories of such nationals.

The third countries in respect of whose nationals or specific categories of nationals such consultation is required shall be as set out in Annex I.

2. Such consultation shall be without prejudice to the time limit for examining visa applications, set out in Article 20(1).
3. If a Member State represents another Member State pursuant to Article 7(1), the central authorities of the representing Member State shall carry out the consultation provided for in paragraph 1².

¹ Several delegations and the **Chair** proposed to delete this Art. since it would not be appropriate to regulate the internal organisation of the Member States by a Community legal text. **DE** entered a scrutiny reservation on that proposal.

² **COM** emphasised that this provision would have to be taken up somewhere else in the text before deleting the whole Art.

Article 9

Prior consultation and information of central authorities of other Member States

1. A Member State may require the central authorities of other Member States to consult its central authorities before issuing visas to nationals of specific third countries or specific categories of such nationals.

The third countries in respect of whose nationals or specific categories of nationals such consultation is required shall be as set out in Annex II¹.

2. The central authorities consulted shall react within ~~three~~ **five**² **calendar** days of receiving the request. The absence of a reply from the consulted authorities within this deadline shall be deemed an authorisation for the consulting central authorities to allow their diplomatic mission or consular post to issue the visa.

3. A Member State may require that its central authorities be informed only of visas issued by diplomatic missions or consular posts of other Member States to nationals of specific third countries or to specific categories of such nationals.

The third countries for whose nationals such information is required are marked by (*) in Annex II.

4. **From the date of the replacement of the Schengen Consultation Network, as referred to in Article 46 of the VIS Regulation**, prior consultation and information³ shall be carried out in accordance with Article 16(2) of the VIS Regulation⁴ (...).

¹ **DE** recalled that the confidentiality of the Annexes should be referred to.

² **PL** proposed the extension of the deadline to seven days. **DE** and **FR** entered a scrutiny reservation and stated that the deadline should be extended in some cases. **COM** opposed to the extension to seven days. The **Chair** concluded that the number of days is still to be determined.

³ **NL** asked whether, in the case of representation, it was the representing or the represented State which should undertake the consultation.

⁴ **DE** entered a scrutiny reservation on the new drafting of this paragraph.

5. **For the purpose of prior consultation until the date referred to in Article 46 of the VIS Regulation, the Schengen Consultation Network (Technical Specifications) shall be amended in accordance with the procedure referred to in Article 49(3) of the VIS Regulation.**¹
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¹ The **Chair** indicated that this paragraph was now unnecessary given the Presidency's proposed draft for a new paragraph in Art. 49 , along these lines: *"Article 48(2)(d) shall apply from the date referred to in Article 46 of the VIS Regulation, as far as the Schengen Consultation Network (Technical Specifications) is concerned."*



Annex 1 to the Annex

**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 10 April 2008

VISA

14-15 April 2008

ROOM DOC. No 9/08

NOTE FROM THE PRESIDENCY

**Subject: Draft Regulation of the European Parliament and of the Council establishing a
Community Code on Visas
- Additional suggestions to those contained in 7661/08**

Article 9

Prior consultation and information of central authorities of other Member States

4. Slight modification of paragraph 4:
4. Prior consultation and information shall be carried out in accordance with Article ~~14~~ **16** (2) of the VIS Regulation ~~n°....~~ **from the date referred to in Article 46 of the VIS Regulation.**
5. New paragraph 5 to Article 9:
5. **For the purpose of prior consultation till the date referred to in Article 46 of the VIS Regulation the Schengen Consultation Network (Technical Specifications) shall be amended in accordance with the procedure referred to in Article 49(3) of the VIS Regulation.**

Article 10

Practical modalities for submission of the application

1. Amendment to Article 10(2):
2. Applicants may be required to obtain an appointment for the submission of an application. ~~This appointment may be arranged directly with the diplomatic mission or consular post or where applicable, via an intermediary.~~ The appointment shall take place within two weeks.
2. Removal of paragraph 4 to Article 10 to Article 12:
4. ~~If the information supplied in support of the application is incomplete, the applicant shall be informed of what additional documentation is required. The applicant shall be invited to provide the additional information/documentation promptly and shall be informed that after 1 calendar month after the date of this invitation, the application will be declared inadmissible if the required information is not submitted.~~

Article 22

Airport transit visas

1. New formulation of Article 22 (2):
2. The following ~~categories of persons~~ **third country nationals** shall be exempt from this requirement to hold an airport transit visa provided for in paragraph 1:
 - (a) holders of a **valid** uniform short stay ~~or transit~~ visa, national long-stay visa and residence permit issued by a Member State,
 - (b) **holders of a valid residence permits issued by a Member State to which this Regulation does not apply,**
 - (c) **holders of valid short stay visa, long stay visa or** residence permits issued by Andorra, Japan, Canada, Monaco, San Marino or United States of America ~~or Vatican~~ guaranteeing the holder's unqualified return, and listed in Annex VIII;
 - (d) family members of citizens of the Union;
 - (e) holders of diplomatic passports;
 - (f) flight crew who are nationals of a contracting Party to the Chicago Convention on International Civil Aviation.
2. New paragraph 3
3. **The exemptions from the airport transit visa requirement, referred to in paragraph 2, apply irrespective of the third country of destination or origin of the flight concerned, except for holders of short stay visas with a validity of less than 1 year issued by the third countries referred to in 2 (c), who are exempted from the airport transit visa requirement only for flights to/from the visa issuing third country.**



Annex 2 to the Annex

**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 10 April 2008

VISA

14-15 April 2008

ROOM DOC. No 10/08

NOTE FROM THE HUNGARIAN DELEGATION

**Subject: Draft Regulation of the European Parliament and of the Council establishing a
Community Code on Visas
- Suggestion to add a new Article 3a**

The Hungarian delegation suggests that a new Article 3a should be inserted in the draft Regulation, reading as follows:

"Conditions of the visa issuance according to substantive law

According to the procedure detailed in this Regulation only those third-country nationals who satisfy the conditions in the Schengen Borders Code, Article 5 Paragraph (1), Point a), c), d) and e) may obtain a visa authorising its bearer to reside less than three months within a six-month period".
